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whether the car became overcrowded before or after the plaintiff got on. *McCumber v. Boston Elev. Ry. Co.*, 207 Mass. 559, 93 N. E. 698, 32 L. R. A. (N. S.) 475.

TORT—DAMAGES FOR MENTAL ANGUISH CAUSED BY ASSAULT.—Defendant called plaintiff up by phone and spoke in violent language to her. Plaintiff, who was in an enfeebled condition, suffered bodily pain and mental anguish therefrom, and sues for damages. *Held*, she can not recover. *Kramer v. Ricksmeier* (Ia. 1913), 139 N. W. 1091.

The consequences of an act, to sustain a recovery, must be such as, in the ordinary course of things, would flow from the act and could be reasonably anticipated as a result thereof. *Braun v. Craven*, 175 Ill. 401, 51 N. E. 657, 42 L. R. A. 199. The courts hold unanimously that where the consequences of the defendant's wrong doing are limited to the mental disturbance of the plaintiff, and the wrongdoing is not actionable in behalf of the plaintiff, apart from such consequences, any harm sustained by the plaintiff is deemed *damnum absque injuria*. *Kalen v. Terre Haute Ry.*, 18 Ind. App. 202, 47 N. E. 694, 63 Am. St. R. 343; *Turner v. Great Nor. Ry.*, 15 Wash. 213, 46 Pac. 243; *Zabron v. Cunard Steamship Co.*, 151 Ia. 345, 131 N. W. 18, 34 L. R. A. (N. S.) 751. However, in cases where such mental disturbance causes physical derangement, the holdings are irreconcilable. Some courts deny liability, *St. Louis etc. Ry. v. Bragg*, 69 Ark. 402, 64 S. W. 226, 86 Am. St. Rep. 206; *Braun v. Craven*, *supra*; *Kansas City Ry. v. Dalton*, 65 Kan. 661, 70 Pac. 645; *Morse v. Chesapeake Ry.*, 117 Ky. 11, 77 S. W. 362; *Ward v. West Jersey Ry.*, 65 N. J. L. 383, 47 Atl. 561; *Nelson v. Crawford*, 122 Mich. 466, 81 N. W. 335, 80 Am. St. Rep. 577; *Arthur v. Henry*, 157 N. C. 393, 73 S. E. 211. Other courts hold that there is a liability if the plaintiff can show, not only that defendant's conduct was wrongful towards someone, but that it was a breach of a legal duty owing to plaintiff by defendant. *Dulieu v. White*, [1901], 2 K. B. 669, 70 L. J. K. B. 837; *Watson v. Dilts*, 116 Ia. 249, 89 N. W. 1068; *Ford v. Schliessman*, 107 Wis. 479, 83 N. W. 761; *Gulf Col. etc. Ry. v. Hayter*, 93 Tex. 239, 54 S. W. 944, 77 Am. St. Rep. 856, 47 L. R. A. 325. The principal case further holds that the action cannot be sustained on the theory that an assault is charged. Mere words, even at short range, do not constitute an assault. *Irlbeck v. Bierl*, 101 Ia. 242, 67 N. W. 400; *Grayson v. St. Louis Transit Co.*, 100 Mo. App. 60, 71 S. W. 730. In the principal case the words were spoken over the telephone. It is significant that the court expressly refrained from intimating an opinion as to the liability of the defendant if he had known the condition of the plaintiff was so enfeebled that she could not endure such speech.

TRIAL.—MOTION TO DISMISS AFTER OPENING STATEMENT.—In an action to recover commission for the sale of certain real estate, the petition alleged that the plaintiff had sold the property on commission pursuant to an agreement made with the defendant owner. The counsel for the plaintiff in the opening statement to the jury stated that he would establish the alleged contract by virtue of a certain conversation, occurring between plaintiff and defendant, and gave the conversation in detail. On motion of the defendant,